***THE HON'BLE MR JUSTICE BILAL NAZKI**

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

+WRIT PETITION NOs: 12605,12606,12607,12608 &12609 of 2004

-

% 05-10-2004

Between:

Damera Ramakrishna and others

…Petitioners

A N D

The Commercial Tax Officer (FAC), Suryaraopet, Vijaywada and others
…Respondents

! COUNSEL FOR THE PETITIONERS: MR.J.V.RAO

^ COUNSEL FOR RESPONDENTS: G.P FOR COMMERCIAL TAXES

< Gist:

> Head Note:

? CITATIONS:

1 AIR 1963 Supreme Court 1150

2 APSTJ 2002 Vol.34 287

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NOs: 12605,12606,12607,12608 &12609 of 2004

WRIT PETITION NO : 12605 of 2004:

Between:

Damera Ramakrishna,

S/o. Damera Kasi Viswanadha Rao,
Damera Nagar, Vijayawada - 520 007, Krishna District.

..... PETITIONER

AND

1 The Commercial Tax Officer (FAC), Suryaraopet, Vijaywada.

2 The Sub- Registrar, Gannavaram.

3 The Managing Director, M/s. Meher Tanneries Private Limited,
H.No. 33-8-11C, Banakapalli Vari Street, Seethapuram,

Vijayawada - 520 003.

4 The Deputy Commercial Tax Officer, Vuyyur, Krishna District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate order or direction particularly one in the nature of Writ of Mandamus, declaring the attachment of the property by the 4th respondent on 30.04.2004 in Form-5, notice of attachment as illegal, unjustified and contrary to the provisions of law and consequently also, declare the issuance of notice dt. 06.02.2004 issued by the 1st respondent as also illegal and unjustified in the facts and circumstances of the case.

Counsel for the Petitioner: MR.J.V.RAO

Counsel for the Respondents: GP FOR COMMERCIAL TAXES

WRIT PETITION NO : 12606 of 2004:

Between:

Damera Suresh, S/o. Damera China Sobhanadraiah,
Manikonda Village, Unguturu Mandal,
Krishna District.

..... PETITIONER

AND

1 The Commercial Tax Officer (FAC), Suryaraopet, Vijayawada.

2 The Sub Registrar, Gannavaram.

3 Managing Director, M/s. Meher Tanneries Private Limited,
H.No. 33-8-11C, Banakapalli Vari Street, Seethapuram,

Vijayawada - 520 003.

4 The Deputy Commercial Tax Officer, Vuyyur, Krishna District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate order or direction particularly one in the nature of Writ of Mandamus declaring the attachment of the property by the 4th respondent on 30-04-2004 in Form-5, notice of attachment as illegal, unjustified and contrary to the provisions of law and consequently also, declare the issuance of notice dated 06-02-2004 issued by the 1st respondent as also illegal and unjustified in the facts and circumstances of the case.

Counsel for the Petitioner: MR.J.V.RAO

Counsel for the Respondents: GP FOR COMMERCIAL TAXES

WRIT PETITION NO : 12607 of 2004:

Between:

Damera Amith,

S/o Damera Ramachandra Rao, Manikonda Village,

Unguturu Mandal,
Krishna District .

..... PETITIONER

AND

1 The Commercial Tax Officer (FAC) Suryaraopet, Vijayawada

2 The Sub- Registrar, Gannavaram, Krishna District

3 Managing Director, M/s. Meher Tanneries Pvt Ltd., H. NO. 33-8-11C, Banakapalli Street Vari
Street Seethapuram, Ghandhinagar, Vijayawada

4 The Deputy Commercial Tax Officer, Vuyyuru, Krishna District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate order or direction particularly one in the nature of Writ of Mandamus, declaring the attachment of the property by the 4th respondent on 30-04-2004 in Form-5, notice of attachment as illegal unjustified and contrary to the provisions of law and consequently also, declare the issuance of notice dated 06-02-2004 issued by the 1st respondent as also illegal and unjustified in the facts and circumstances of the case

Counsel for the Petitioner: MR.J.V.RAO

Counsel for the Respondents: GP FOR COMMERCIAL TAXES

WRIT PETITION NO : 12608 of 2004:

Between:

Damera Jagadish, S/o Damera Kasi Viswanadha Rao,
Damera Nagar, Vijayawada-520 007
Krishna District

..... PETITIONER

AND

1 The Commercial Tax Officer (FAC) Suryaraopet,
Vijayawada.

2 The Sub-Registrar, Gannavaram.

3 Managing Director, M/s Meher Tanneries Pvt Ltd.,
H.No.33-8-11C, Banakapall Vari Street, Seethapuram,

Vijayawada-520 003

4 The Deputy Commercial Tax Officer Vuyyur,
Krishna District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate order or direction particularly one in the nature of Writ of Mandamus, declaring the attachment of property by the 4th respondent on 30/04/2004 in Form -5 notice of attachment as illegal, unjustified and contrary to the provisions of law and consequently also, declare the issuance of notice dt. 06/02/2004 issued by the 1st respondent as also illegal and unjustified in the facts and circumstances of the case.

Counsel for the Petitioner: MR.J.V.RAO

Counsel for the Respondents No.: GP FOR COMMERCIAL TAXES

WRIT PETITION NO : 12609 of 2004:

Between:

Dameral Kalyan, S/o Damera Srinivasa Rao,
Manikonda Village, Unguturu Mandal, Krishna District.

..... PETITIONER

AND

1 The Commercial Tax Officer (FAC), Suryaraopet, Vijayawada.

2 The Sub Registrar, Gannavaram.

3 Managing Director, M/s Meher Tanneries Pvt. Ltd,
H.No. 33-8-11C, Banakapalli Vari Street, Seethapuram,

Vijayawada- 520 003.

4 The Deputy Commercial Tax Officer, Vuyyur, Krishna District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate order or direction particularly one in the nature of Writ of Mandamus, declaring the attachment of the property by the 4th respondent on 30-4-2004 in Form-5, notice of attachment as illegal, unjustified and contrary to the provisions of law and consequently also, declare the issuance of notice dated 6-2-2004 issued by the 1st respondent as also illegal and unjustified in the facts and circumstances of the case.

Counsel for the Petitioner: MR.J.V.RAO

Counsel for the Respondents: GP FOR COMMERCIAL TAXES

The Court made the following :

O R D E R (Per the Hon'ble Sri Justice Bilal Nazki):

Heard learned counsel for the parties. All these writ petitions raise a similar question of law, hence, we are disposing of the matters by a common order.

The writ petitioners have challenged the attachment of the property by the fourth respondent by order dated 30-04-2004 in form No.5 A consequential notice to the order of attachment was passed under Section 17-A of the Andhra Pradesh General Sales Tax Act, 1957, (for short “the Act”) on 06-02-2004. According to the attachment order and the notice under Section 17-A of the Act, one M/s Mehar Tanneries Private Limited was assessee on the rolls of the Commercial Tax Officer, Suryaraopet, Vijayawada, for the years 1993-94 to 1996-97 and fell in sales tax arrears to the tune of Rs.35,98,030/-. Several notices were issued for payment of the arrears and when arrears were not paid, the Sub-Registrar, Gannavaram, was also addressed a letter on 16-09-2003 by registered post with acknowledgment due requesting him not to register the immovable properties of the above Company. Meanwhile, M/s Mehar Tanneries Private Limited, Vijayawada, sold its immovable properties comprising of land to an extent of Ac.10.23 gts and building situated in it and registered it to different persons on 15-12-2003 and 29-12-2003. The property was sold for a consideration of Rs.18,75,000/- vide six registered documents. The Department maintained in the notice that M/s Mehar Tanneries Private Limited, with an intention to evade tax legitimately due to the Department and to defraud the Government revenue, willfully sold and registered its immovable properties to different persons in spite of receipt of several notices for payment of sales tax arrears. Therefore, the Department maintained that the transfer of property by M/s Mehar Tanneries Private Limited to the petitioners was void under Section 17-A of the Act as it had charge over the property under Section 16-C of the Act.

On the other hand, the case of the petitioners is that they had paid due consideration for the transactions and purchased the property through registered sale deeds. There was no method or no way out for the petitioners to know whether the seller was in arrears of sales tax or not, since, they purchased the property, which was registered by the Sub-Registrar, after obtaining non-encumbrance certificate of the property from the Revenue authorities and there was no other way for them to

receive any knowledge with regard to the arrears of their seller on account of sales tax.

Before appreciating these arguments, it will be profitable to have a look on the different provisions of the Act.

Section 16-C of the Act lays down that:

> *"**16-C.Liability under this Act to be the first charge:** Notwithstanding anything to the contrary contained in any law for the time being in force [any amount of Tax, Government loan extended to the dealer due to treating deferred tax as deemed to have been paid, penalty, interest] and any other sum if any, payable by a dealer or any other person under this Act, shall be the first charge on the property of dealer, or such person."*

Section 17-A of the Act reads as under:

> *"**17-A.Transfers to defraud revenue void:** where during the pendency of any proceeding under this Act, or after the completion thereof any dealer creates, a charge on, or parts with the possession by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever of any of his assets in favour of any other person, with the intention to defraud the revenue, such charge or transfer shall be void as against any claim in respect of any tax, or any other sum payable by the dealer as a result of the completion of the said proceeding or otherwise."*

There is no doubt that under Section 16-C of the Act, the sales tax due to the Government shall be the first charge on the property of the dealer notwithstanding anything to the contrary contained in any law. Section 17-A of the Act lays down that any conveyance of property in favour of any other person with the intention to defraud the revenue, such conveyance would be void. But the proviso saves the transfers, if the transfers have been made for adequate consideration and without notice of the pendency of such proceeding under this Act or, as the case may be, without notice of such tax or other sum payable by the dealer.

Learned counsel for the petitioners submits that the petitioners had obtained non-encumbrance certificate from the authorities concerned and also got the documents registered by the Sub-Registrar. If the petitioners had in fact informed the Sub-Registrar about the encumbrance of the property, then the Sub-Registrar would have not registered the documents. Only a copy of the letter purported to have been sent by the Department to the Sub-Registrar was produced before us. There is nothing to prove and in fact not even the acknowledgment due was placed on record. In any case, even if such letter has gone to the Sub-Registrar and the Sub-Registrar failed to take notice of that letter, a *bona fide* purchaser cannot be punished for that. While analysing Section 17-A of the Act, we feel that after discharging the initial burden that the property was sold to defraud the Department and avoid payment of sales tax, the onus will shift to the purchasers to show that they were *bona fide* purchasers and that they were not parties to the fraud being played by the assessee, and they had paid adequate consideration for the purchase.

In the present case, the initial burden has not been discharged by the Department. In the counter-affidavit, nothing has been attributed to the petitioners that they were parties to any fraud having been played against the Department by the Dealer. In the absence of such pleadings, one cannot but come to the conclusion that the petitioners were *bona fide* purchasers. On the other hand, the purchasers have shown to the Court that they have paid consideration of more than Rs.18 lakhs. It is not contended by the Department that the consideration was not adequate. The petitioners have also shown that they have obtained certificates, which are necessary for effecting the sales, and thirdly, the documents were registered by the Sub-Registrar of Registrations.

Learned Government Pleader for Commercial Taxes has relied on the judgment reported in ***C.Abdul Shukoor Saheb v.Arji Papa Rao***. In this judgment, the Supreme Court was concerned with Section 53 of the Transfer of Property Act, 1882. Section 53 of the Transfer of Property Act is almost similar to Section 17-A of the Act.

Section 53 of the Transfer of Property Act, 1882, lays down that:

1. *“Every transfer of immoveable property made with intent to defeat or delay the creditors of the transferor shall be voildable at the option of any creditor so defeated or delayed.”*

The first exception to Section 53 is

> *“Nothing in this sub-Section shall impair the rights of a transferee in good faith and for consideration.”*

The Supreme Court while analysing it at para 17 of the judgment held that:

> *“The next question is whether the plaintiff is a bona fide purchaser for value so as to be protected by the second paragraph of S. 53(1) reading :*
>
> *"Nothing in the Section impairs the rights of the transferee in good faith and for consideration."*
>
> *As stated earlier, the learned trial Judge held that Rs. 19,000/-, the sale price was the full value of the property and that the consideration as recited in the document was paid by the purchaser. This finding has not been set aside by the High Court. We are, therefore, proceeding on the basis that the transfer was real and supported by consideration. The narrow question is whether the plaintiff was a transferee in good faith. It was submitted on behalf of the appellant that the learned Judges of the High Court had directed the dismissal of the plaintiff's suit even without a definite finding that the plaintiff was a party to the fraud on the part of the transferor to defeat or delay the creditors. There might be some force in this submission that there is no specific finding to that effect but that does not in any way assist the appellant. Where fraud on the part of transferor is established i.e. by the terms of paragraph (1) of S. 53(1) being satisfied, the burden of proving that the transferee fell within the exception is upon him and in order to succeed he must establish that he was not a party to the design of the transferor and that he did not share the intention with which the transfer had been effected but that he took the sale honestly believing that the transfer was in the ordinary and normal course of business. When once the conclusion is reached that the transfer was effected with the intent on the part of the transferor to convert the property into cash so as to defeat or delay his creditors there cannot be any doubt*

on the evidence on record that the plaintiff shared that intent. For this purpose the following circumstances may be pointed out :

(1) The plaintiff and the vendor belong to the same community, a small, compact and well-knit one and they must obviously have known each other having been in trade for several years in several places in common and must therefore have been well- acquainted with the financial and business affairs of each other.

(2) This general inference apart, the plaintiff admittedly had with him a copy of the deed of dissolution dated March 31, 1949 which disclosed that the firm's business had resulted in losses and that it was greatly indebted, the debts amounting to Rs. 2 ½ lakhs.

(3) If as we have held that registration of the sale deed at Madras was with a view to keep the transaction secret from the creditors, the plaintiff was as much a party to the secrecy as the transferor.

(4) One matter which would be of considerable relevance and significance in this connection would be the enquiries that the plaintiff made before he took the transfer. He no doubt led evidence to show that he consulted his lawyers about the title of the vendor, but any attempt at an enquiry of the 4th defendant as to why he was effecting the sale of the only immoveable property of the firm which was allotted to him under the deed of dissolution is significantly absent."

In the light of this judgment, we are of the view that onus in the first instance is on the Department to prove that there was a fraud and the transaction was made only to defeat the rights of the Department to recover the tax and in case the Department was able to prove it, then the onus would shift to the petitioners to show that they were not parties to the fraud played by the assessee against the Department.

Reliance was also placed on the judgment reported in ***Ganji Venkateswara Rao and another Vs.Deputy Commercial Tax Officer Vijayawada*** to show that in terms of Section 27 of the Revenue Recovery Act read with Section 17-C of the Act, the remedy open to the petitioners was to file a civil suit.

We have gone through the judgment. The question of filing a civil suit would only arise if the respondents had pleaded that the petitioners were parties to the fraud played against the Department. Even before this Court, the Department has not stated that the petitioners were parties to any mischief or fraud played by the assessee with the Department. If one reads in between the lines of the counter-affidavit, one comes to the only one conclusion that the Department was also of the view that the petitioners were *bona fide* purchasers. Therefore, they cannot be forced to go to the civil Court.

For these reasons, we allow the writ petitions, quash the impugned notices. No order as to costs.

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(BILAL NAZKI, J)

5th October, 2004.

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(S.ANANDA REDDY, J)

Note:L.R.Copies to be marked

B/o

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The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Tuesday, the Fifth day of October, Two thousand and Four.

One fair copy to the Hon'ble Sri Justice Bilal Nazki

(for his Lordships kind perusal)

One fair copy to the Hon'ble Sri Justice S.Ananda Reddy

(for his Lordships kind perusal)

To

1 The Commercial Tax Officer (FAC), Suryaraopet, Vijaywada.

2 The Sub- Registrar, Gannavaram.

3 The Managing Director, M/s. Meher Tanneries Private Limited,
H.No. 33-8-11C, Banakapalli Vari Street, Seethapuram,

Vijayawada - 520 003.

4 The Deputy Commercial Tax Officer, Vuyyur, Krishna District.

5 Two CCs to the Government Pleader for Commercial Tax, High

Court of A.P., Hyderabad.

6 8 L.R.copies.

7 The Under Secretary, Union of India, Ministry of Law, Justice and

Company Affairs, New Delhi.

8. The Secretary, A.P.Advocates' Association Library, High Court Buildings,

Hyderabad

9. Two C.Cs to the Government Pleader for Commercial Taxes, High Court of A.P. Hyderabad (OUT)

10. Two C.D copies